IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5253 OF 2006

Smt Girja Pandurang Salunkhe
and ors. .. Petitioners.
(Orig.Plffs)

Vs

Smt Latabai Vithoba Salunkhe .. Respondent
(Orig.Deft)

Mr Vishwanath Talkute, for the petitioners.
Respondent, though served, absent.

CORAM : D.B.BHOSALE,J.
DATE : 16.10.2006

PC:

1. Heard the learned counsel for the petitioners. None appears for the respondent.

2. In this writ petition, a notice to the respondent was issued on 23.8.2006. The petitioners have filed an affidavit of service stating that the respondent has refused to accept personal notice and that the registered notice was also sent. It appears that the registered notice has been received by the respondent and the acknowledge is placed on record. In the circumstances, I am constrained to decide this writ petition in the absence of the respondent.

3. Rule. Rule is heard forthwith.

4. This petition is directed against the order dated 14.2.2006, by which the petitioners' application under Order 6, Rule 17 of CPC has been rejected. By that application, the petitioners sought to correct the date of a Will executed by Pandurang Bapu Salunkhe. In the original pleadings the date of the Will was mentioned as 20.5.1998. However, from the written statement it appears that the correct date of the Will was 15.10.1998 and in view thereof the application seeking to correct the date of the will was filed by the petitioners. The defendant claims right on the basis of the said Will. Admittedly, there are no two Wills. In the circumstances, the observations made by the learned Judge while rejecting the application for amendment holding that the amendment would change the basic nature of the suit, cannot be sustained. The date of the Will was mentioned by the plaintiffs in the pleadings on the basis of the mutation entry no.1484. However, admittedly, the will was executed on 15.10.1998. The registered Will of that date is also placed on record. Keeping that in view and considering the overall facts and circumstances of the case, in my opinion, the amendment would be necessary for the purpose of determining the real question in controversy between the parties and no prejudice whatsoever would be caused to the defendants. It is open for the defendant to file an

additional written statement, if they so desire. In the circumstances, I pass the following order.

(a) The impugned order dated 14.2.2006 is quashed and set aside. The application at Exhibit-65 for amendment under Order 6 Rule 17 of CPC is allowed. The petitioners to carry out the amendment within two weeks from the date of receipt of this order. Liberty to the respondent-defendant to file an additional written statement if he so desires within four weeks from the date of carrying out the amendment. It is also open for the defendant to re-examine the witness, if any, already examined on her behalf and make appropriate application seeking such relief from the court. If such an application is filed, same may be allowed.

(b) With these observations, the rule is disposed of.

(D.B.BHOSALE,J.)